

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF ALABAMA**

In re

Case No. 03-32063 - WRS  
Chapter 7

TERRY MANUFACTURING  
COMPANY, INC.,

Debtor

**MEMORANDUM DECISION**

This Chapter 7 case is before the Court on the application to employ AEA Group, LLC (“AEA Group”) to provide accounting services and expert assistance to Phelps Dunbar, LLP (“Phelps Dunbar”), Special Litigation Counsel to the Trustee. (Doc. 774). More specifically, AEA Group is being sought to aid in the prosecution of pending avoidance cases before this Court, any future litigation that may arise in this Court, and litigation recently filed in the Circuit Court for Randolph County, Alabama. (Doc. 774). The employment of AEA Group has been previously approved to provide forensic accounting services, analytical procedures, and other services to the Trustee before this case was converted to a Chapter 7 on May 13, 2004. (Doc. 98). The application presently before this Court has prompted the objection of Cintas Corporation No. 2 (“Cintas”). (Docs. 792, 811). Both Cintas, Phelps Dunbar, and the Bankruptcy Administrator have filed several memoranda in support of their respective positions. (Docs. 774, 792, 793, 811, 814). For the reasons set forth below, the application to employ AEA Group is APPROVED.

## **II. Background**

On July 7, 2003, Terry Manufacturing Company, Inc. (“TMC”) filed a voluntary Chapter 11 petition in the United States Bankruptcy Court for the Middle District of Alabama. J. Lester Alexander III (“Trustee”) was appointed as Trustee on July 16, 2003. (Docs. 1, 35). Terry Uniform Company, LLC (“TUC”), filed a voluntary Chapter 11 petition on July 22, 2003. (Doc. 53). These two cases are jointly administered but have not been substantively consolidated. (Doc. 53). Both cases were converted to a Chapter 7 on or about July 13, 2004, and the Trustee, J. Lester Alexander III, was appointed Trustee for the two Chapter 7 Debtors in this case. (Doc. 794).

AEA Group was first sought out by the Trustee to assist in forensic accounting and financial consulting services. (Doc. 98). The Trustee asserted that these services were initially needed to reconstruct the financial books and records of TMC, that were either never created, destroyed, or erroneous. (Doc. 794). The specific services AEA Group offered to provide was the assistance of the Trustee in the Debtor’s record keeping and compliance duties, the review of records for preferential or fraudulent transfers, the location of diverted funds or assets of the Debtor, the identification of misappropriated assets, and to analyze accounting practices. (Doc. 98). According to the application filed on August 13, 2003, AEA Group in particular was chosen because of their considerable experience and knowledge in matters of this kind. (Doc. 98).

## **II. Discussion**

The Trustee seeks to employ AEA Group to provide accounting services and expert assistance to Phelps Dunbar, Special Litigation Counsel to the Trustee, in the prosecution of the avoidance cases pending before this Court, as well as any litigation that may arise in the future.

Section 327(a) of the Bankruptcy Code provides that:

Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

11. U.S.C. § 327(a).

The present application reflects that AEA Group does not “hold or represent an interest adverse to the estate.” Furthermore, the Court finds that AEA Group is a disinterested person within the meaning of 11 U.S.C. § 101(14). The application states that AEA Group does not now have any relationship with any of the creditors in the case, and is not a creditor or insider of the Debtor. (Doc. 774). The Court notes that the Trustee, J. Lester Alexander III, is a principal of AEA Group and that he is the brother of J. Stephen Alexander, a certified public account with and a principal of AEA Group. It has also been disclosed in a previous application for employment that AEA Group has been retained by SouthTrust Bank to perform forensic accounting services in the past, including services with respect to TMC. (Doc. 98). Neither the Trustee nor AEA Group believed at the time of the application that this representation would prevent AEA Group from being a disinterested party as defined in § 101(14) of the Bankruptcy Code (Doc.

98). The Bankruptcy Administrator has noted these disclosures in its Response and has approved the present application of AEA Group. (Doc. 793).

Cintas, the target of a lawsuit filed by the Trustee in this case, objects to AEA Group's employment on two grounds. (Docs. 792, 794, 811). First, Cintas argues that the intent of the proposed arrangement is to allow AEA Group to continue to provide services to the Trustee, but to be paid by Phelps Dunbar on a monthly basis, which in turn is entitled to be reimbursed by the estate without Court approval. (Docs. 792, 811). Cintas contends that this arrangement allows AEA Group to make an end run around the requirements of 11 U.S.C. § 327 and § 330. (Doc. 792, 811). However, this argument has no merit because the Trustee has not attempted to avoid meeting the statutory requirements with respect to the employment of professionals. Under the proposed arrangement, AEA Group will continue to provide financial and accounting services to the Special Litigation Counsel. Fees and expenses incurred by the Special Litigation Counsel, including work performed by AEA Group, will be billed and paid by the Trustee on a monthly basis. Phelps Dunbar will provide advances to AEA Group for work performed and will be able to be reimbursed from the estate. A final application for fees and expenditures will be presented to the Court for approval. Copies of such transactions will be delivered to the Bankruptcy Administrator for its review. In no way does this arrangement skirt around the requirements of § 327 or § 330, as a final application of expenditures must be approved by the Court.

Cintas' second objection focuses on whether AEA Group will be paid for all of the work that AEA Group has previously performed in connection with this case prior to conversion. (Docs. 792, 811). This argument is an attempt to delve into the methods of

fee payment and as such, the Court will not now entertain such an objection. Such objections should be brought when an application for fee payment has been made. The application presently before the Court is only to approve the employment of AEA Group and that is the only issue the Court is prepared to address at this point in time. For the aforementioned reasons, the application of AEA Group is APPROVED.

Done this 7<sup>th</sup> day of January, 2004.

/s/ William R. Sawyer  
United States Bankruptcy Judge

c: J. Lester Alexander, III, Trustee  
Brent B. Barriere, Attorney for Trustee  
Teresa Jacobs, Bankruptcy Administrator  
Robert G. Sanker  
Michael L. Scheier